

GENERAL ORDER NO. 46

DISCIPLINE

A. General.

In the event that a judge has cause to believe that an attorney has engaged in unprofessional conduct, the judge may do any or all of the following: initiate proceedings for civil or criminal contempt under Title 18 of the United States Code and Rule 42 of the Federal Rules of Criminal Procedure, impose other appropriate sanctions, refer the matter to the appropriate disciplinary authority of the state or jurisdiction in which the attorney is licensed to practice or refer the matter to the Court's Standing Committee on Professional Conduct pursuant to this Order.

B. "Attorney" Defined.

The term "attorney" may include law corporations and partnerships, when the alleged conduct occurs in the course and scope of employment by the corporation or partnership, and also shall include attorneys admitted to practice in this Court pro hac vice pursuant to Civil Local Rule 11-2(b).

C. Standing Committee on Professional Conduct.

The Court will appoint a Standing Committee on Professional Conduct consisting of seven members of the bar and designate one of the members to serve as chairperson of the Committee. The members of the Committee shall continue in office for a period of four years. Members shall serve staggered terms, with four of the first appointees serving for two years and three members serving for four years.

D. Discipline Oversight Committee.

The Chief Judge shall appoint three (3) or more judges to a Discipline Oversight Committee which shall oversee the administration of this Order.

E. Reciprocal Discipline and Discipline Following Felony Conviction.

1. Any attorney admitted to practice in this Court who is convicted of a felony, suspended, disbarred or placed on disciplinary probation by any court or who resigns from the bar of any court with an investigation into allegations of unprofessional conduct pending shall give notice to the Clerk in writing within ten (10) days of such event. Except in cases in which the attorney has been placed on disciplinary probation only, the attorney immediately shall be suspended from practice before this Court pending hearing as set forth below.

2. Unless referred to the Standing Committee on Professional Conduct, matters subject to reciprocal discipline on the grounds listed in paragraph (e)(1) above shall be handled by the Clerk's Office to the maximum extent possible. In such matters, the Chief Judge shall issue and the Clerk shall mail to the respondent attorney an order to show cause why the attorney should not be disbarred, suspended, placed on disciplinary probation or otherwise disciplined.

3. If no response is received to an order to show cause within thirty (30) days of mailing, the Clerk shall transmit a recommended order of discipline to the Chief Judge, who shall, without further process, enter an appropriate order. In such cases the Chief Judge may order disbarment for persons finally convicted of a felony, disbarment or suspension for a term equal to or less than that imposed by the reciprocal jurisdiction or disciplinary probation on the same terms and conditions as imposed by the reciprocal jurisdiction.

4. An attorney who wishes to contest reciprocal discipline must file a timely response to the order to show cause. The Chief Judge may then act on the matter, assign it to another judge or refer it to the Standing Committee on Professional Conduct for recommendation.

5. An attorney disbarred, suspended or placed on disciplinary probation under the reciprocal discipline provisions of this Order may seek reinstatement upon completion of the period of suspension, disbarment or disciplinary probation by filing a petition with the Clerk, together with proof of any reinstatement by the reciprocal jurisdiction. An attorney disbarred by reason of a felony conviction may not petition for reinstatement until at least one year after entry of the disbarment order.

F. Matters Referred to the Standing Committee on Professional Conduct

1. Unless otherwise directed by the Court, the Standing Committee on Professional Conduct shall investigate any charge or information, referred in writing by a judge of this Court, that any member of the bar of this Court or any attorney permitted to practice in this Court has engaged in unprofessional conduct in connection with an action in this district. Each matter referred shall be assigned an appropriate number by the Clerk, who shall maintain a file under seal. At the written request of the Standing Committee, the Chief Judge (or in a matter referred by the Chief Judge, the duty judge) may direct the issuance of subpoenas and subpoenas duces tecum.

2. Investigations shall be conducted informally as the Standing Committee deems advisable. Investigations shall be confidential unless the Discipline Oversight Committee, upon application by the Standing Committee on Professional Conduct or the attorney, finds that a compelling reason exists to make the matter public. The Standing Committee may finally resolve any referred matter informally, short of formal discipline, as it deems appropriate, and shall

provide a report of its investigation and any resolution to the referring judge. Records shall be maintained as directed by the Discipline Oversight Committee.

3. All final action of the Standing Committee shall require a majority vote. However, the Standing Committee may organize itself and conduct its affairs by subcommittees of one or more members as it deems advisable. If a majority of the members determine that public reprimand, suspension, disbarment, or other formal discipline is warranted, and the respondent attorney does not consent, the Standing Committee shall institute a disciplinary proceeding by filing with the Clerk a sealed petition. Upon the filing of the petition, the proceeding shall be assigned to a judge, other than the referring judge, in the same manner as any other civil action or proceeding. Unless otherwise directed by the assigned judge, the proceeding shall then be presented by a member of the Standing Committee. The presenting attorney shall be paid out-of-pocket expenses from court funds.

4. The judge to whom the proceeding is assigned shall issue an order to show cause setting a date for hearing, addressed to the respondent attorney, requiring the attorney to appear and show cause why he or she should not be disciplined as prayed for in the petition. The order shall direct that a copy thereof, together with a copy of the petition, be served on the respondent in a manner permitted by FRCivP 5(b) not less than thirty-five (35) days in advance of the date specified for hearing. Any response shall be filed at least twenty-one (21) days in advance of the date specified for hearing. Thereafter, the matter shall proceed in accordance with the Federal Rules of Civil Procedure and this Court's Civil Rules as to discovery, motion practice, pretrial and trial as in other civil actions. Written findings of fact and an order based thereon shall be filed by the judge when dismissing the proceeding or when imposing discipline.

5. Except with respect to reciprocal discipline pursuant to section E of this Order, any order of disbarment or suspension from practice for more than one year shall be reviewable by a panel of three judges of this Court designated by the Chief Judge, upon petition filed by the respondent within ten (10) days of filing of the order. Discipline is not stayed during such a review, absent contrary order from the panel or the ordering judge. Review by any such panel shall be de novo as to matters of law and under the substantial evidence test as to matters of fact. This provision shall not apply to revocation of permission to practice pro hac vice.

6. The Clerk shall give prompt notice of any order of discipline imposed pursuant to this Order to the disciplinary body of the court(s) before which the respondent attorney has been admitted to practice.

G. Costs.

Any discipline or other resolution imposed under this Order may include an order that the respondent attorney pay costs of prosecution, including out-of-pocket expenses of the presenting attorney.

ADOPTED BY THE COURT: FEBRUARY 23, 1999

FOR THE COURT:

MARILYN HALL PATEL
Chief Judge